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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/626,383

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James L. Kroening

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24333

7590

10/10/2006

GATEWAY, INC.

ATTN: Patent Attorney

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EXAMINER

PATEL, KAUSHIKKUMAR M

ART UNIT

PAPER NUMBER

2188

DATE MAILED: 10/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/626,383	<b>Applicant(s)</b> KROENING, JAMES L.	
	<b>Examiner</b> Kaushikkumar Patel	<b>Art Unit</b> 2188	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 July 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-22 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8, 10-19, 21 and 22 is/are rejected.
- 7) ☒ Claim(s) 9 and 20 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |                                                                                                                        |                                                                                                    |
|------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                            | 4) <input checked="" type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)                        |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____                                                           |

**DETAILED ACTION**

***Response to Amendment***

1. This Office Action is in response to the Applicant's communication filed on July 19, 2006 in response to PTO Office Action mailed April 19, 2006. The Applicant's remarks and amendments to the claims and/or the specification were considered with the results that follow.

**Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.**

2. In response to the last Office Action, no claims amended. Claim 22 is added. As a result, claims 1-22 remain pending in this application.

3. The objection to specification is maintained. Applicant argues that the concept of Host Protected Area (HPA) was developed by the Gateway (assignee of present application) and mentioned the U.S. patent 5,966,732. After reviewing the patent Examiner was not able to find any suggestion or other information in the patent that suggests applying the HPA to random access memories or other storage devices other than hard disk. Also in the specification page 3, applicant mentions about PARTIES specification reserving HPA for hard disk drives.

### ***Response to Arguments***

4. Applicant's arguments with respect to claims 1-21 have been fully considered but they are not persuasive.

5. Applicant argues that Kawano (US 2003/0229768 A1) teaches method of backing user area into HPA of same disk drive. Then, if software stored in user area becomes damaged the backup copy can be retrieved from HPA. According to one embodiment of Kawano, the data is transferred from one partition to other partition and further mentions data can be accessed between partitions (see paragraphs [0016] and [0044]). Nowhere in those paragraphs Kawano mention of damaged user area. The meaning of the term "access" (in paragraph [0044]) can be "read, write, modify or manipulate" the data. Thus, Kawano teaches of transferring data to and from HPA to user space and visa versa. Applicant also argues that Kawano archives data by passing

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it from user area to the protected area in remarks page 9. The meaning of "passing the data" from one partition to other can be interpreted as "copying from one partition to other". Applicant further argues that the final result of Kawano and APA means backing of unstable data (remarks page 9). Applicant admits that Kawano restores data from HPA to user space after damage to user space; so now the restored data does not remain damaged (as it was restored after the damage). Thus one having ordinary in the skill would be further motivated to backup all the data (including data from HPA) to secondary storage away from same disk of HPA. Applicant admits in the background of the invention (well known) that careful users periodically saves the contents of their storage devices to backup storage devices so that data can be recovered when disaster strikes (see specification page 2). Also applicant admits that HPA is not accessible by the operating system, so save function of the operating system can't backup the data from HPA (present application specification page 3). Kawano teaches a method of accessing HPA and passing of the data between partitions. So one having ordinary skill in the art now would be motivated to transfer data from HPA to user space and backup all the data from user space to storage away from the same storage (hard disk).

6. The rejections of claims 1-8 and 10-21 are maintained and reiterated below.

***Claim Rejections - 35 USC § 112***

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

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8. Claim 22 recites the limitation "first contents" in line 3. There is insufficient antecedent basis for this limitation in the claim. The term "storing first contents" is not defined in the specification. It is not clear what applicant means by the term "first contents"?

***Claim Rejections - 35 USC § 101***

9. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

10. Claims 7-12 are rejected under 35 U.S.C. 101. Claims 7-12 are not limited to tangible embodiments. In view of applicant's disclosure, specification page 8, lines 8-9, the signal bearing medium is not limited to tangible embodiments, instead being defined as including both tangible embodiments (e.g. read-only memory device, CD-ROM, hard disk) and intangible embodiments (e.g. communication medium, telephone network etc.). As such, the claims are not limited to statutory subject matter and are therefore non-statutory.

***Claim Rejections - 35 USC § 103***

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 1-~~6~~, 17-19 and 21-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kawano et al. (US 2003/0229768) (Kawano herein after) and further in view of Applicant's Admitted Prior Art (APA herein after).

As per claim 1, Kawano teaches a method:

Copying contents of a protected area of a first storage device to a user area of the first storage device (taught as storage device having two partitions (paragraph [0033]) and the user data is backed up to the PARTIES partition and retrieved the data back to user partition (paragraph [0039]) thus, Kawano inherently teaches contents of the protected area are copied to the user area of the storage device).

Kawano fails to teach saving user area to a second storage device. But as per APA users backup their storage devices (first storage device) to backup storage devices (specification page 2, lines 24-25). It would have obvious to one having ordinary skill in the art at the time of invention to have backed up the user partition data to second storage device so that data can be retrieved in case of damage to the first storage device (specification page 2, lines 19-25)

As per claim 2, Kawano teaches the program, which causes the computer to execute the accessing function (paragraph [0020]). Kawano also teaches that the program can be distributed (downloaded) via a network (paragraph [0021]).

As per claims 3 and 4, APA teaches that the user area of the storage devices are saved to the second storage devices directly connected to electronic device or indirectly connected, e.g. attached to the backup server (specification page 2, lines 25-26).

As per claim 5, Kawano teaches that booting to protected area and administering the user data (paragraph [0033]).

As per claim 6, As per APA the protected areas are not accessible by the operating system (specification page 2, lines 30-32). It would have been obvious to one having ordinary skill in the art at the time of the invention have booted back to user partition to have access to operating system residing in the user area to back up the data stored in the user area because the save and restore functions are performed by the operating system residing in the user area.

Claims 17 and 21 are rejected under same rationale as applied to claims 1 and 2 above. Claim 1, as taught by Kawano and APA above copies the protected area to user and backing up the user area to another storage device directly or indirectly attached to the electronic device, and claim 2 teaches downloading utility software from network or server.

Claim 18 and 19 are rejected under same rationale as per claims 4-6 above.

As per claim 22, Kawano teaches transferring second contents (data from HPA) from HPA to user area (paragraphs [0016] and [0044]). And as per claim 1, APA teaches backing up first contents (data from user space) and second contents to secondary storage space.

***Claim Rejections - 35 USC § 103***

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:



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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

14. Claims 7-8 and 10-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Applicant's Admitted Prior Art (APA herein after) and further in view of Kawano et al. (US 2003/0229768) (Kawano herein after).

As per claim 7, APA teaches saved contents can be restored to the electronic device (e.g. data can be restored from back up storage (first storage) to the storage connected to the device (second storage) (page 2, lines 27-28) and also as per APA operating system is unable to access the HPA, it inherently teaches restoring the data in user space of the second (attached to device) storage).

APA fails to teach copying protected area directory (data) from the user space of second storage to protected area of the second storage. Kawano teaches the data in the user area is copied to protected area (paragraph [0039]). It would have been obvious to one having ordinary skill in the art at the time of the invention to have modified the restoring method of APA by the teachings of Kawano so that the data can be protected from viruses and system can be recovered without using removable disks or storage devices (paragraph [0008]).

As per claim 8, APA inherently teaches saving of data from second (attached to the electronic device) storage to the first storage (attached to the back up server) before restoring. Because one having ordinary skill in the art at the time of invention would knew that data can be restored from back up storage device if data was backed up from second storage to first storage (back up storage) initially.

Claims 10-12 are rejected under the same rationale as applied to claims 5,6 and 2 as above.

***Claim Rejections - 35 USC § 103***

15. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

16. Claims 13-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kawano et al. (US 2003/0229768) (Kawano herein after) and further in view of Applicant's Admitted Prior Art (APA herein after) (and Stevens (US 6,779,109 B2) presented as an evidentiary reference).

As per claim 13, Kawano teaches an electronic device (fig. 1, par. [0031], taught as computer system) comprising:

a processor (inherent in computer system); an a storage device (fig, 1, item 11), wherein the storage device comprises instructions, which when executed on the processor (par. [0029] and [0030]) comprise:

booting to the protected area and copying contents of the protected area to a user area of the storage device (par. [0042], taught as BIOS boots the special operating system from PARTIES partition and par. [0016], user data is passed between partitions).

Kawano fails to teach, determining whether the storage device includes a protected area and saving user area to a backup storage device. But as per APA users backup their storage devices (first storage device) to backup storage devices (specification page 2, lines 24-25). It would have obvious to one having ordinary skill in the art at the time of invention to have backed up the user partition data to second storage device so that data can be retrieved in case of damage to the first storage device (specification page 2, lines 19-25).

APA teaches that some storage device contains a protected area (specification page 2, lines 30-31). It would have been obvious to one having ordinary skill in the art at the time of the invention implemented a process to check whether the storage device includes a protected area before trying to boot from PARTIES partition because all storage devices do not include protected area (APA, page 2, lines 30-31, checking whether a protected area is present on a storage device is known in the art as taught by Stevens. See abstract).

As per claim 14, Kawano teaches rebooting to user area after user data is restored from PARTIES partition (par. [0043]).

As per claim 15, APA teaches backup storage device (specification page 2, lines 24-25).

As per claim 16, Kawano teaches storing software modules on different storage devices or on network system (par. [0030]). It would have been obvious to one having ordinary skill in the art at the time of the invention to download software from different

storage device (network) to be executed by computer system to achieve the functionality of Kawano.

***Allowable Subject Matter***

17. Claims 9 and 20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims and by overcoming rejection under 35 U.S.C. 101 non-statutory subject matter.

18. The following is a statement of reasons for the indication of allowable subject matter:

As per dependent claims 9 and 20, APA or Kawano fail to teach creating the protected area (claim 9) as well as create utility (claim 20) on the storage device attached to the electronic device before backing up the data from the back up storage device.

***Conclusion***

19. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Stevens (US 2002/0133702 A1) teaches a method granting access to a protected area and retrieving a directory of service in protected area and manipulating the data. Itah et al. (US 2004/0243759) teaches method of gaining access to protected area and copying protected area data to another location.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kaushikkumar Patel whose telephone number is 571-272-5536. The examiner can normally be reached on 8.00 am - 4.30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mano Padmanabhan can be reached on 571-272-4210. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
kmp

Kaushikkumar Patel  
Examiner  
Art Unit 2188

  
9/29/06

**MANO PADMANABHAN  
SUPERVISORY PATENT EXAMINER**